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Transcript of Christina Bacon, LPP

Date: April 13, 2023

Case: Kitchens, Jr. -v- National Board of Medical Examiners

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 -----X
4 DR. MARKCUS KITCHENS, JR., :
5 Plaintiff, :
6 v. : Case No.
7 NATIONAL BOARD OF MEDICAL : 2:22-CV-03301-JFM
8 EXAMINERS, :
9 Defendant. :
10 -----X

11
12 Videotaped Deposition of CHRISTINA BACON, LPP

13 Conducted Virtually

14 Berea, Kentucky

15 Thursday, April 13, 2023

16 8:57 a.m. ET

17

18

19

20

21

22

23 Job No. 487997

24 Pages 1 - 78

25 Reported by: Jacquelyn C. Jarboe, RPR

1 Deposition of CHRISTINA BACON, LPP,
2 conducted virtually.
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7 Pursuant to Notice of Deposition
8 Subpoena, before Jacquelyn C. Jarboe, Registered
9 Professional Reporter and Notary Public in and for
10 the State of Maryland, who officiated in
11 administering the oath to the witness.
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1 A P P E A R A N C E S

2

3 ON BEHALF OF PLAINTIFF, MARKCUS KITCHENS, JR.:

4 DR. MARKCUS KITCHENS, JR.

5 Acting in Propria Persona

6 625 Hampton Way, No. 2

7 Richmond, Kentucky 40475

8

9 ON BEHALF OF DEFENDANT, NATIONAL BOARD OF

10 MEDICAL EXAMINERS:

11 CAROLINE M. MEW, ESQUIRE

12 PERKINS COIE LLC

13 700 13th Street, Northwest

14 Suite 800

15 Washington, D.C. 20005

16 (202) 654-1767

17

18 ALSO PRESENT:

19 MANITA JOSEPH, Videographer

20 MICHAEL PIETANZA, AV Technician

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1 C O N T E N T S

2 EXAMINATION OF CHRISTINA BACON, LPP	PAGE
3 By Ms. Mew	6
4 By Dr. Kitchens	61

5

6

7 E X H I B I T S

8 (Attached to the Transcript)

9 DEFENDANT'S EXHIBIT	PAGE
10 Exhibit CB-1 Report of Attention Deficit	
11 Hyperactivity Disorder	
12 Evaluation	25
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14 Exhibit CB-4 ABCL/18-59 - Adaptive	
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1 P R O C E E D I N G S 08:57:41

2 THE VIDEOGRAPHER: Here begins media 08:56:19

3 number 1 in the videotaped deposition of Christina 08:56:21

4 Bacon, LPP, in the matter of Kitchens, Jr. v. 08:56:25

5 National Board of Medical Examiners, in the United 08:56:32

6 States District Court for the Eastern District of 08:56:37

7 Pennsylvania, Case Number 2:22-CV-03301-JFM. 08:56:41

8 Today's date is April 13, 2023. The 08:56:56

9 time on the video monitor is 8:57 a.m. The remote 08:57:01

10 videographer today is Manita Joseph, representing 08:57:08

11 Planet Depos. All parties of this video deposition 08:57:12

12 are attending remotely. 08:57:15

13 Would counsel please voice-identify 08:57:17

14 themselves and state whom they represent. 08:57:18

15 MS. MEW: Caroline Mew, counsel for the 08:57:24

16 National Board of Medical Examiners. 08:57:26

17 DR. KITCHENS: Dr. Markcus Kitchens, pro 08:57:28

18 se, plaintiff. 08:57:30

19 THE VIDEOGRAPHER: The court reporter 08:57:34

20 today is Jacquelyn Jarboe, representing Planet 08:57:35

21 Depos. The witness will now be sworn in. 08:57:38

22 Whereupon, 08:57:41

23 CHRISTINA BACON, LPP 08:57:41

24 being first duly sworn or affirmed to testify to 08:57:41

25 the truth, the whole truth, and nothing but the 08:57:41

Transcript of Christina Bacon, LPP

Conducted on April 13, 2023

6

1 truth, was examined and testified as follows: 08:57:41
2 EXAMINATION BY COUNSEL FOR DEFENDANT 08:57:59
3 NATIONAL BOARD OF MEDICAL EXAMINERS 08:57:59
4 BY MS. MEW: 08:58:00
5 Q Good morning, Ms. Bacon. 08:58:01
6 A Good morning. 08:58:03
7 Q So, we met also remotely during the 08:58:04
8 preliminary injunction hearing. It's nice to see 08:58:06
9 you again and I do appreciate your time this 08:58:11
10 morning. 08:58:13
11 A Thank you. 08:58:14
12 Q This is a deposition. I will be asking 08:58:15
13 you questions, and my questions and your answers 08:58:16
14 will be recorded by the court reporter and also by 08:58:20
15 the videographer. Do you understand that? 08:58:22
16 A I do. 08:58:25
17 Q And then my questions and your answers 08:58:25
18 will eventually be captured in a written 08:58:28
19 transcript. Do you understand that as well? 08:58:31
20 A I do, yes. 08:58:32
21 Q And do you understand that you are under 08:58:35
22 oath today and are required to testify truthfully? 08:58:37
23 A Yes. 08:58:39
24 Q Have you been deposed before? 08:58:40
25 A No. 08:58:42

1 Q Other than the hearing we had in 08:58:47
2 February, have you testified at trial before? 08:58:48
3 A No. 08:58:50
4 Q Are you on any medications that would 08:58:53
5 impact your ability to understand my questions or 08:58:54
6 to testify fully and truthfully in this deposition 08:58:56
7 today? 08:58:59
8 A I am not. 08:59:00
9 Q Is there any other reason that you are 08:59:03
10 aware of that would limit your ability to testify 08:59:04
11 fully and truthfully in this deposition today? 08:59:07
12 A No. 08:59:11
13 Q If I ask a question that you do not hear 08:59:15
14 clearly or that you do not understand, will you 08:59:17
15 please say so, so that I can ask the question again 08:59:20
16 or ask it in a different way? 08:59:23
17 A Yes. 08:59:26
18 Q And this has already gotten off to, I 08:59:28
19 think, a good cadence, but if I ask a question will 08:59:30
20 you do your best to wait until I finish asking my 08:59:33
21 question before you answer? 08:59:36
22 A Yes. 08:59:37
23 Q And you're also doing a great job of this 08:59:38
24 so far, but will you make it a point to answer 08:59:42
25 questions with clear words rather than, for 08:59:44

1 example, just nodding your head or saying something 08:59:44
2 like "uh-huh" or something more vague? 08:59:44

3 A Yes, I will. 08:59:51

4 Q And I'll try to keep my eye out for that 08:59:52
5 as well. Or my ear out, I should say. 08:59:56

6 If at any point you need a break, just 09:00:00
7 let me know, and we can take a break. The only 09:00:03
8 thing I will say is if there's a question pending 09:00:06
9 I'd like to have that question answered, and then 09:00:08
10 we can take the break after that. But just let me 09:00:11
11 know if at any point you need a break. 09:00:13

12 A Okay. 09:00:16

13 Q So, as you know, we're taking this 09:00:17
14 deposition remotely and you and I are not in the 09:00:18
15 same room and the court reporter is not in the same 09:00:21
16 room with either one of us. Do you waive any 09:00:21
17 objection you might have to not having the court 09:00:23
18 reporter in the same room with you while you're 09:00:26
19 testifying? 09:00:29

20 A No. That's okay with me, I don't -- can 09:00:29
21 you ask that question again. 09:00:35

22 Q Let me ask it again. 09:00:37

23 A Okay. 09:00:38

24 Q Do you waive any objection you might have 09:00:38
25 to not having the court reporter in the same room 09:00:40

Transcript of Christina Bacon, LPP

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9

1 with you while testifying? 09:00:42
2 I'll ask it so it's not a double 09:00:47
3 negative. 09:00:49
4 A Thank you. 09:00:50
5 Q Is it okay with you that the court 09:00:51
6 reporter is not in the same room with you while 09:00:52
7 you're testifying? 09:00:55
8 A Yes, yes. The double negative was -- 09:00:56
9 Q I got you. Thank you. 09:00:59
10 And so where are you physically located 09:01:00
11 right now? 09:01:02
12 A Berea, Kentucky. 09:01:03
13 Q And are you on a private internet 09:01:05
14 connection and not public WIFI? 09:01:07
15 A I am. 09:01:08
16 Q You are on a private internet connection? 09:01:10
17 A I am on a private internet, secured, you 09:01:12
18 know, connection. 09:01:16
19 Q Have you shared the link to joining this 09:01:17
20 deposition with anyone else? 09:01:19
21 A No. 09:01:20
22 Q Do you understand that only the court 09:01:22
23 reporter and videographer can record this 09:01:24
24 deposition, you may not take a sound or other 09:01:27
25 recording of the deposition? 09:01:29

1 A Yes. 09:01:31

2 Q Is there anyone else in the room with 09:01:34

3 you? 09:01:36

4 A No. 09:01:36

5 Q Do you agree not to communicate with Dr. 09:01:38

6 Kitchens during the deposition about the deposition 09:01:40

7 or the questions that I'm asking, other than what 09:01:43

8 is discussed on the record before the court 09:01:46

9 reporter? 09:01:48

10 A I do. 09:01:48

11 Q And this would include any written 09:01:52

12 communications or communications by text or email. 09:01:53

13 Do you agree? 09:01:55

14 A I agree. 09:01:57

15 Q I want to back up. You received a 09:02:00

16 subpoena for documents from the National Board of 09:02:02

17 Medical Examiners in this lawsuit; is that correct? 09:02:05

18 A Yes. 09:02:08

19 Q And you provided documents to me in 09:02:09

20 response to that subpoena, correct? 09:02:12

21 A I did. 09:02:13

22 Q And to confirm, are the documents that 09:02:15

23 you provided true and correct copies of records 09:02:17

24 that you keep in the ordinary course of your 09:02:19

25 business? 09:02:22

1 A They're everything that I have, yes. 09:02:23

2 Q Okay. Do I understand correctly that you 09:02:25

3 did not withhold any documents? 09:02:28

4 A Yes, you understood that correctly. 09:02:32

5 Q And this is a technical question, but I 09:02:35

6 just want to repeat it so we have it for the 09:02:37

7 record. Are the documents true and correct copies 09:02:40

8 of records that you keep in the ordinary course of 09:02:42

9 your business? 09:02:44

10 A Yes. 09:02:44

11 Q And I just again wanted to double-check. 09:02:46

12 Did you take any kind of interview notes when you 09:02:48

13 were meeting with Dr. Kitchens other than what was 09:02:52

14 in the documents produced to us? 09:02:55

15 A No, it is part of my -- part of my job, I 09:02:56

16 do not take interview notes. 09:03:02

17 Q Okay. 09:03:04

18 A Written. You have what I -- you have 09:03:04

19 what I took. 09:03:06

20 Q Understood. Thank you. 09:03:07

21 What specialized training do you have 09:03:13

22 around the diagnosis of ADHD? 09:03:15

23 A Can you clarify what you mean by that? 09:03:21

24 Q What training do you have -- I'll ask it 09:03:24

25 more generally. What training do you have in the 09:03:27

1 diagnosis of ADHD? 09:03:29

2 A As part of my training as a master's 09:03:32

3 clinician, I am trained, I was trained in diagnosis 09:03:37

4 and -- the DSM diagnosis, and I use the DSM to 09:03:42

5 diagnose all disorders. So, ADHD would be among 09:03:52

6 that. 09:03:56

7 Q Have you taken any specialized classes or 09:04:04

8 other training on ADHD specifically? 09:04:07

9 A No. 09:04:10

10 Q Have you published any articles on ADHD? 09:04:12

11 A No. 09:04:17

12 Q And I want to back up so the record is 09:04:17

13 clear. When I'm referring to ADHD, that is 09:04:19

14 attention deficit hyperactivity disorder. Do you 09:04:22

15 agree? 09:04:26

16 A Yes. 09:04:26

17 Q Have you published any books on ADHD? 09:04:28

18 A No. 09:04:30

19 Q I understand from the preliminary 09:04:34

20 injunction hearing that you began performing ADHD 09:04:35

21 assessments in September of 2022; is that correct? 09:04:39

22 A Yes. 09:04:42

23 Q And you are not a specialist in ADHD; is 09:04:45

24 that correct? 09:04:48

25 A To my knowledge, there's not a 09:04:51

1 certification for psychology professionals that -- 09:04:54
2 so, I'm not sure what that is asking. 09:04:59
3 Q I'll ask it a different way. Do you 09:05:02
4 consider yourself a specialist in ADHD? 09:05:04
5 A No. 09:05:07
6 Q At the hearing you testified that you 09:05:10
7 have conducted 16 ADHD evaluations, and I think -- 09:05:12
8 was that correct at the time of the hearing? 09:05:17
9 A I stand by what I said. I'm not sure, 09:05:20
10 I'm not in front of the numbers right now. 09:05:23
11 Q Sure. Can you tell me as of today, do 09:05:25
12 you have a general idea of how many ADHD 09:05:27
13 evaluations you have conducted? 09:05:30
14 A I have not continued to conduct the 09:05:34
15 assessments since the last -- since our hearing, I 09:05:37
16 have not conducted any new assessments. 09:05:40
17 Q Understood. How many adults have you 09:05:46
18 assessed for ADHD? 09:05:49
19 A I'd have to look at my numbers. I could 09:05:50
20 estimate if you want. So, I won't do that. 09:05:54
21 Q Do you assess children and adults for 09:06:00
22 ADHD? 09:06:03
23 A Yes. 09:06:04
24 Q You don't have to estimate numbers, but 09:06:08
25 do you have a general sense of how much of your 09:06:10

1 practice in ADHD involves working with children 09:06:13
2 versus working with adults? 09:06:16
3 A Without an estimation, I can say that I 09:06:21
4 have more adults assessed than children. 09:06:24
5 Q Is there a particular protocol you follow 09:06:32
6 when conducting an ADHD evaluation? 09:06:34
7 A Yes. 09:06:37
8 Q And what is that? 09:06:37
9 A According to the APA, we are required to 09:06:40
10 have a semi-structured interview. And I use the 09:06:45
11 Achenbach System of Empirically Based Assessments, 09:06:56
12 and there's a computerized assessment that is 09:07:03
13 given. 09:07:08
14 Q When you refer to the APA, what are you 09:07:14
15 referring to? 09:07:17
16 A I'm referring to the American 09:07:18
17 Psychological Association. 09:07:19
18 Q And any specific requirement of the 09:07:26
19 American Psychological Association that you're 09:07:28
20 referring to? 09:07:33
21 A No, it is -- I'm following what I 09:07:34
22 understand to be the practice for assessing, for 09:07:37
23 assessments. 09:07:43
24 Q And when you reference a semi-structured 09:07:44
25 interview, what are you referring to? 09:07:49

1 A I'm referring to -- it's in the records 09:07:51
2 that you have, the DIVA 2.0. And that is where we 09:07:54
3 discuss symptoms, history, and there are -- there's 09:07:58
4 lists of specific symptoms. And that's what I'm 09:08:10
5 referring to. And how those -- and then it goes on 09:08:19
6 to look at how those interfere with the day-to-day 09:08:21
7 life. 09:08:25

8 Q Do you conduct any interview apart from 09:08:36
9 the DIVA? 09:08:40

10 A When we -- we have general interview 09:08:43
11 conversations, yes, but that is during the regular 09:08:46
12 part of the assessment. During the -- generally, 09:08:52
13 during the computerized -- the appointment that we 09:09:00
14 do, the computerized assessment, that doesn't take 09:09:04
15 the full hour, so I use the other part of the hour 09:09:08
16 to continue with the interview. 09:09:11

17 Q And that part of the interview you do not 09:09:17
18 take notes of; is that correct? 09:09:23

19 A No, I do not. 09:09:27

20 Q You do not take notes from the general 09:09:28
21 interview time? 09:09:30

22 A Those are in my records, those are in 09:09:31
23 the -- in the records that I sent to you. 09:09:33

24 Q Okay. I think my extra question might 09:09:36
25 have -- let's try this again. 09:09:40

1 So, you said that apart from the DIVA and 09:09:44
2 the structured clinical interview you conduct 09:09:47
3 general conversation during the assessment, say, 09:09:51
4 after the computerized assessment and you have 09:09:55
5 extra time, you continue to converse with the 09:09:59
6 patient; is that correct? 09:10:03

7 A Yes. 09:10:05

8 Q And do you consider that part of your 09:10:06
9 evaluation? 09:10:08

10 A Yes. 09:10:10

11 Q Do you take notes from what you discuss 09:10:11
12 with your clients during that time? 09:10:15

13 A I put that in the assessment report. 09:10:17

14 Q And when you refer to the computerized 09:10:32
15 assessment, is that the M-O-X-O? 09:10:37

16 A Yes. 09:10:40

17 Q And do you call it the M-O-X-O or the 09:10:40
18 MOXO? 09:10:44

19 A I call it the MOXO just for ease. 09:10:45

20 Q I will do so as well, it's much easier. 09:10:48

21 09:10:53
22 How much time do you typically spent with
a patient when you're evaluating for ADHD? 09:10:56

23 A The semi-structured interview appointment 09:11:01
24 is approximately an hour. The MOXO appointment is 09:11:03
25 approximately an hour. So, 53 minutes is how long 09:11:10

1 it has to be. And there's a little variation in 09:11:17
2 there. And then when we meet to go over the 09:11:22
3 results, I generally meet for an hour. 09:11:29

4 Q Do I understand correctly that you follow 09:11:38
5 this same general protocol in all of your ADHD 09:11:41
6 evaluations? 09:11:44

7 A Except for with Dr. Kitchens, we did not 09:11:48
8 have the hour of going over the assessment results. 09:11:56
9 I sent the report. 09:12:01

10 Q Are there any other assessments that you 09:12:10
11 have used for ADHD evaluations? 09:12:12

12 A We use screeners that let me know whether 09:12:14
13 a person is a good candidate sometimes. It's the 09:12:19
14 ASRS-v1.1. And that is the adult symptom rating 09:12:24
15 scale, or adult ADHD symptom rating scale if you 09:12:34
16 looked that up. And I have a general -- it's a 09:12:41
17 questionnaire that you saw in the record of getting 09:12:46
18 kind of a background information from anybody who 09:12:51
19 wants to do an assessment. 09:12:54

20 Q Anything else? 09:13:00

21 A No. 09:13:04

22 Q And you did not use the screener, the 09:13:08
23 ASRS, with Dr. Kitchens, correct? 09:13:12

24 A We would -- I would have to look in the 09:13:18
25 chart to know. 09:13:20

1 Q Okay. What type of background documents 09:13:21
2 do you typically ask for when you're evaluating for 09:13:25
3 ADHD? 09:13:28

4 A So, generally we have -- well, so for the 09:13:29
5 most part, the people I have done assessments for 09:13:38
6 are established clients, thus far have been 09:13:45
7 established clients that we have different 09:13:51
8 documentation for. So, I haven't had to require a 09:13:57
9 lot of background information. 09:14:03

10 I ask for the -- with the ASEBA, it asks 09:14:10
11 for history, I ask for history from the clients. 09:14:15

12 Q And when you refer to history, do you 09:14:24
13 mean history as reported by the client -- 09:14:27

14 A Yes. 09:14:29

15 Q -- or -- 09:14:30

16 A Yes. 09:14:32

17 Q Do you keep abreast of research relating 09:14:48
18 to ADHD? 09:14:50

19 A I do. 09:14:51

20 Q What are some research articles relating 09:14:53
21 to ADHD that you have recently reviewed? 09:14:56

22 A I don't have them in front of me, I'm 09:14:58
23 sorry. 09:15:00

24 Q So, you can't remember the names of any 09:15:03
25 of the articles? 09:15:06

1 A I can't remember the name of any article. 09:15:08

2 I can remember Russell Barkley, Ph.D., in his book, 09:15:09

3 treating -- how to treat ADH -- adult AD -- 09:15:18

4 treating ADHD, adult ADHD, maybe. But Russell 09:15:21

5 Barkley. 09:15:25

6 Q So, do you consider Dr. Barkley to be an 09:15:31

7 informative source for ADHD information? 09:15:38

8 A Yes. 09:15:40

9 Q Are there any other practitioners in the 09:15:41

10 field of ADHD whom you find particularly 09:15:43

11 influential? 09:15:46

12 A Not off the top of my head. 09:15:51

13 Q Do you follow the Diagnostic and 09:16:04

14 Statistical Manual of Disorders, or DSM, in your 09:16:05

15 practice? 09:16:11

16 A I do. 09:16:11

17 Q And what is the current edition of the 09:16:12

18 DSM? 09:16:14

19 A The DSM-5-TR. 09:16:15

20 Q What are the essential elements of an 09:16:19

21 ADHD diagnosis according to the DSM? 09:16:23

22 A Would you like me to read it? 09:16:26

23 Q No, I'm asking for your general 09:16:28

24 understanding. 09:16:30

25 A I would need to have it in front of me in 09:16:35

1 order to give the list. 09:16:38

2 Q Do you agree that the DSM requires there 09:16:50

3 to be a persistent pattern of inattention and/or 09:16:53

4 hyperactivity? 09:16:57

5 A Yes. 09:17:02

6 Q Do you agree that several of the 09:17:04

7 inattentive or hyperactive impulsive symptoms must 09:17:06

8 be present before 20 -- let me start again. 09:17:11

9 Do you agree that several of the 09:17:15

10 inattentive or hyperactive impulsive symptoms must 09:17:18

11 be present prior to 12 years of age? 09:17:19

12 A Yes. 09:17:22

13 Q Do you agree that several of the 09:17:24

14 inattentive or hyperactive impulsive symptoms must 09:17:26

15 be present in two or more settings? 09:17:30

16 A Yes. 09:17:32

17 Q Do you agree that the inattention and/or 09:17:35

18 hyperactivity has to interfere with functioning or 09:17:39

19 development? 09:17:44

20 A Yes. 09:17:45

21 Q Do you agree that there must be clear 09:17:45

22 evidence that the symptoms of ADHD interfere with 09:17:47

23 or reduce the quality of social, academic, or 09:17:50

24 occupational functioning? 09:17:55

25 A Yes. 09:17:57

1 Q There's a distinction between 09:17:59
2 experiencing symptoms of ADHD and having an 09:18:01
3 impairment from ADHD, correct? 09:18:03
4 A Say that again, please. 09:18:09
5 Q There's a distinction between 09:18:11
6 experiencing symptoms of ADHD and having impairment 09:18:14
7 from ADHD? 09:18:18
8 A Yes. 09:18:20
9 Q For an ADHD diagnosis, the DSM-5-TR 09:18:25
10 requires not just symptoms but evidence of 09:18:30
11 clinically significant impairment in current 09:18:33
12 functioning; is that correct? 09:18:37
13 A Yes. 09:18:38
14 Q Is it your opinion that Dr. Kitchens is 09:18:40
15 experiencing clinically significant impairment in 09:18:43
16 his current functioning due to ADHD symptoms? 09:18:46
17 A It is, yes. 09:18:50
18 Q And in what settings? 09:18:50
19 A In the settings as reported for his work; 09:18:53
20 in the setting when talking to me during our 09:18:57
21 assessment; and reported that there's in the 09:19:04
22 setting of with social interactions. So, that was 09:19:13
23 three things as far as I could see, at least. 09:19:23
24 Q And what is the evidence of this 09:19:28
25 impairment outside of Dr. Kitchens' self-report? 09:19:31

1 A The interview interactions that I had 09:19:34
2 with him. My own observations. 09:19:38

3 Q Anything else? 09:19:48

4 A I would have to look at the -- at the 09:19:54
5 information from the chart. 09:20:00

6 Q When you refer to the chart, are you 09:20:06
7 referring to your written evaluation? 09:20:08

8 A The doc -- yes, the written evaluation, 09:20:10
9 the documentation that you have. 09:20:13

10 Q Is failure to pass a test like the 09:20:38
11 national medical licensing examination alone 09:20:42
12 evidence that someone has ADHD? 09:20:45

13 A No. 09:20:47

14 Q Are you familiar with symptom validity 09:20:56
15 assessments? 09:20:59

16 A Yes. 09:20:59

17 Q And what are symptom validity 09:21:00
18 assessments? 09:21:02

19 A I want to back up and say clarify, in 09:21:08
20 what order, in what way you mean that, in general, 09:21:11
21 or what you mean by -- 09:21:14

22 Q Yes. 09:21:20

23 A -- that? 09:21:21

24 Q Sorry, I didn't mean to talk over you. 09:21:22

25 A I apologize, too. What did you mean by 09:21:24

1 that, yeah. 09:21:25

2 Q In general, what do you -- how would you 09:21:26

3 describe a symptom validity assessment? 09:21:27

4 A In general, I would say that there are 09:21:30

5 assessments that have -- that test the validity of 09:21:33

6 the responses, and they -- they have a scale for 09:21:37

7 that, they have a way to measure that. 09:21:46

8 Q What are some examples of symptom 09:21:51

9 validity assessments? 09:22:02

10 A I don't know off the top of my head. 09:22:03

11 Q Do you think it is important to include a 09:22:13

12 symptom validity assessment as part of a ADHD 09:22:15

13 evaluation? 09:22:17

14 A Yes. 09:22:17

15 Q Did you administer any standalone symptom 09:22:23

16 validity assessment to Dr. Kitchens? 09:22:25

17 A The MOXO has a symptom validity. 09:22:28

18 Q Anything other than what is part of the 09:22:34

19 MOXO itself? 09:22:38

20 A No. 09:22:39

21 Q I meant to ask this at the outset, but 09:22:51

22 did you do anything to prepare for the deposition? 09:22:53

23 A No. 09:22:56

24 Q So, you did not look back over your 09:22:58

25 records? 09:23:00

1 A I have eight clients a day. 09:23:01
2 Q Understand. 09:23:05
3 When did you have your first appointment 09:23:10
4 with Dr. Kitchens? 09:23:11
5 A I would have to look at the chart to look 09:23:13
6 at the date. 09:23:15
7 Q If I represent to you that your report 09:23:24
8 indicates February 7th and February 8th appointment 09:23:25
9 dates, does that sound correct to you? 09:23:30
10 A That sounds correct, but I would have 09:23:32
11 to -- I would have to look at a calendar. But yes, 09:23:33
12 that sounds correct. 09:23:36
13 Q Before February 7th, had you ever met 09:23:38
14 Dr. Kitchens. 09:23:41
15 A I don't know what day that February 7th 09:23:49
16 is on. On one day before, or a day before, we had 09:23:51
17 talked on the phone when he called to ask for 09:23:57
18 the -- to be assessed. 09:23:59
19 Q You didn't have any prior treatment 09:24:04
20 relationship with him; is that correct? 09:24:06
21 A Correct. 09:24:07
22 Q And have you had any ongoing treatment 09:24:08
23 relationship with him after your evaluation? 09:24:12
24 A I have not. Since our last court 09:24:15
25 hearing, I should say. 09:24:21

1 Q I understand. But no, I -- and just to 09:24:23
2 clarify, I'm asking, have you had any ongoing 09:24:24
3 treatment relationship with him after your 09:24:26
4 evaluation? 09:24:29

5 A I have -- no, no. 09:24:31

6 Q You're not treating him for ADHD; is that 09:24:33
7 correct? 09:24:35

8 A Correct. 09:24:36

9 Q And you haven't conducted any further 09:24:39
10 evaluation of him other than what was in your prior 09:24:41
11 report? 09:24:46

12 A Exactly. You have all communication that 09:24:47
13 I had with him. 09:24:49

14 Q I understand. 09:24:50

15 MS. MEW: I'd like to ask the technician 09:24:57
16 to pull up CB-1. 09:24:59

17 Michael, just checking that you heard 09:25:25
18 that. 09:25:26

19 AV TECHNICIAN: I'm sorry, which document 09:25:30
20 did you want me to pull up? 09:25:32

21 MS. MEW: Can you pull up Exhibit CB-1, 09:25:38
22 please. 09:25:41

23 (Defendant's Exhibit CB-1 was marked for 09:25:46
24 identification and is attached to the transcript.) 09:25:46

25 MS. MEW: And Michael, if you could 09:25:46

1 please just -- actually, let me ask it this way? 09:25:47

2 Q Ms. Bacon, I just want you to have a 09:25:51

3 chance to -- we're going to flip through 09:25:53

4 electronically this and see if you recognize this 09:25:56

5 as the report that you prepared. So, if you 09:25:58

6 could -- I will let you ask Michael to scroll down 09:25:59

7 when you're ready so you have a chance to eyeball 09:26:06

8 it. 09:26:09

9 Are you ready to have it scrolled down? 09:26:36

10 A Are you asking me? 09:26:38

11 Q Yes, I'm sorry, I want to just give 09:26:39

12 you -- this is all a bit awkward when it's on the 09:26:41

13 screen. So, I just want to make sure that you have 09:26:44

14 a chance to see it. So, we can scroll -- 09:26:47

15 A I can see it, yes. 09:26:54

16 Q Okay. 09:26:54

17 MS. MEW: You can keep scrolling. 09:26:54

18 Q And may we keep scrolling down, 09:26:55

19 Ms. Bacon? 09:26:57

20 A Absolutely. 09:26:58

21 Q Okay. 09:26:58

22 MS. MEW: You can just scroll through now 09:26:59

23 to the end, please, Michael. 09:27:01

24 Q Ms. Bacon, do you recognize this 09:27:14

25 document? 09:27:16

1 A Yes. 09:27:16

2 Q Is CB-1 a true and correct copy of the 09:27:18

3 evaluation report you prepared for Dr. Kitchens? 09:27:21

4 A Yes. 09:27:27

5 Q And Dr. Kitchens sought out your 09:27:28

6 evaluation to support his request for testing 09:27:30

7 accommodations; is that correct? 09:27:32

8 A Yes. Well -- yes, yes, sorry. 09:27:35

9 MS. MEW: And if I could ask Michael to 09:27:41

10 scroll back up to the first page of CB-1. 09:27:43

11 Q You list on this first page under the 09:27:52

12 heading assessment procedures a number of items. 09:27:54

13 Why do you list these assessment procedures in your 09:28:01

14 report? 09:28:04

15 A I list these to explain what I have done 09:28:04

16 as part of the procedure. 09:28:11

17 Q Do you think it is important to list 09:28:21

18 these assessment procedures as part of your report? 09:28:23

19 A Yes. 09:28:27

20 Q And what purpose does it serve? 09:28:38

21 A I mean, I guess at the onset it gives the 09:28:49

22 list of the procedures, the assessment procedures. 09:28:51

23 Q When you prepare one of these -- well, 09:29:01

24 let me ask this a different way. 09:29:03

25 Was it your understanding that this 09:29:05

1 report would be reviewed and relied upon by others? 09:29:07

2 A Yes. 09:29:19

3 Q Do you think it is important for -- let 09:29:19

4 me start again. 09:29:21

5 Was it your understanding that this 09:29:23

6 report might be submitted to the National Board of 09:29:24

7 Medical Examiners in support of an accommodation 09:29:27

8 request? 09:29:31

9 A I didn't -- I mean -- give me just a 09:29:40

10 minute. I'm not sure that I knew the name of who 09:29:46

11 it was going to. I would have to look at my record 09:29:50

12 to know that. But I did understand that it would 09:29:54

13 be used in a way to request accommodations. 09:29:58

14 Q Is it your standard practice to list all 09:30:16

15 of the assessment procedures that you use in your 09:30:17

16 evaluation in this section of your report? 09:30:22

17 A Yes. 09:30:24

18 Q One thing you list under assessment 09:30:28

19 procedures is record review. 09:30:30

20 A I see that. 09:30:34

21 Q Thank you. You agree that it is 09:30:36

22 important to review records as part of an ADHD 09:30:38

23 assessment, correct? 09:30:42

24 A Yes. 09:30:44

25 Q Do those records include educational 09:30:44

1 records such as school transcripts, standardized 09:30:49
2 test scores, or report cards? 09:30:53
3 A Can you ask the question again, how you 09:30:58
4 said that? 09:31:00
5 Q The records that you review as part of an 09:31:05
6 ADHD assessment, could those records include 09:31:09
7 educational records such as school transcripts, 09:31:12
8 report cards, or standardized test scores. 09:31:15
9 A They could. 09:31:19
10 Q Could records include reports of prior 09:31:26
11 ADHD assessments? 09:31:28
12 A Yes, they could. 09:31:34
13 Q Do you ever review those types of records 09:31:35
14 for other individuals you evaluate for ADHD? 09:31:37
15 A If they are available. 09:31:40
16 Q Did you review any educational records 09:31:45
17 for Dr. Kitchens as part of your evaluation? 09:31:48
18 A I'd have to look at the record to see. 09:31:53
19 You have all of the records that I have. 09:31:55
20 Q If you reviewed a particular record, 09:32:05
21 would it be discussed in your report? 09:32:07
22 A In general, I would say -- well, I would 09:32:18
23 have to look -- I would have to look at the report. 09:32:23
24 Q Okay. If we could look to page 2 of 09:32:25
25 CB-1. The second header on this page states 09:32:31

1 current medications. Do you see where I am? 09:32:42

2 A Yes. 09:32:44

3 Q And it lists propanolol, am I pronouncing 09:32:47

4 that correctly? 09:32:55

5 A Propanolol is how its -- 09:32:55

6 Q Propanolol, thank you. And Adderall. Is 09:32:59

7 that correct? 09:33:02

8 A That's correct. 09:33:02

9 Q What is propanolol? 09:33:03

10 A I'm not a medical doctor, so I'm not sure 09:33:08

11 that I can answer that question. 09:33:12

12 Q From just your general understanding, do 09:33:13

13 you have any idea what it's used to treat? 09:33:15

14 A I have not looked it up myself, I've only 09:33:21

15 heard it through clients' explanations. So I 09:33:24

16 cannot attest to that on the record, or for sure. 09:33:30

17 Q I understand. Did you ask Dr. Kitchens 09:33:34

18 what he was taking this medication for? 09:33:35

19 A I'm sorry, I don't remember. 09:33:41

20 Q What is Adderall? 09:33:43

21 A It's a medication generally used to treat 09:33:47

22 ADHD. A stimulant. 09:33:50

23 Q Do I understand correctly that 09:34:01

24 Dr. Kitchens informed you that these are his 09:34:03

25 current medications? 09:34:04

1 A Yes. 09:34:08

2 Q Did you see any records of his 09:34:10

3 medications, a prescription note, or a bottle, or 09:34:13

4 anything like that? 09:34:17

5 A I don't remember. I would have to look 09:34:20

6 at the record. If the -- I would stand by what is 09:34:27

7 in -- if I have the record. 09:34:30

8 Q Okay. Does the fact that someone has 09:34:34

9 been prescribed Adderall indicate that someone has 09:34:36

10 ADHD? 09:34:40

11 A Generally. But a doctor has diagnosed 09:34:45

12 it, I don't -- that's all the information I would 09:34:53

13 have, yeah. 09:34:58

14 Q Let me ask it a different way. Or let me 09:35:05

15 put it this way. I understand from your response 09:35:12

16 that the fact that someone has been prescribed 09:35:14

17 Adderall informs you that someone has diagnosed him 09:35:17

18 with ADHD; is that correct? 09:35:21

19 A It informs me that a doctor believes that 09:35:27

20 they have a need for ADH -- for the ADHD 09:35:32

21 medication. 09:35:35

22 Q You conducted your evaluation over two 09:35:38

23 days, correct? 09:35:40

24 A Correct. 09:35:41

25 Q And I think we talked about this a little 09:35:43

1 bit earlier. On the first day of your evaluation 09:35:45
2 you conducted a semi-structured clinical interview 09:35:48
3 and went through the DIVA 2.0, correct? 09:35:51
4 A Correct. 09:35:55
5 MS. MEW: We can take down CB-1. And if 09:36:10
6 you could please pull up CB-2. 09:36:12
7 (Defendant's Exhibit CB-2 was arked for 09:36:18
8 identification and is attached to the transcript.) 09:36:18
9 Q Do you recognize this document, 09:36:43
10 Ms. Bacon? 09:36:45
11 A Yes. 09:36:46
12 Q Are you able to read it on the screen? 09:36:47
13 A Yes. 09:36:50
14 Q And what is this document? 09:36:50
15 A This is the -- I would -- it's the note 09:36:53
16 that Therapy Notes requires us to put in to 09:37:03
17 document our time. It's -- as you can see at the 09:37:09
18 top, it's Psychological Evaluation with the service 09:37:15
19 code 96130. That's the -- 09:37:17
20 Q Go ahead, I didn't me to interrupt. 09:37:24
21 A Sorry, I -- I'm sorry, it was -- the 09:37:25
22 service code is the CPT code, so -- the 96130. 09:37:27
23 This just indicates that we did a psychological 09:37:36
24 evaluation. 09:37:40
25 Q Did you fill out this psychological 09:37:43

1 evaluation report as part of your regularly 09:37:46
2 conducted activities? 09:37:47
3 A Yes. 09:37:52
4 Q And this is a true and correct copy of 09:37:52
5 this psychological evaluation report? 09:37:54
6 A Yes. 09:37:58
7 Q If you look at the last header on this 09:38:12
8 page, additional comments, it states, "The client 09:38:15
9 has a history of ADHD diagnosis and treatment since 09:38:23
10 early childhood." Do you see that? 09:38:26
11 A Yes. 09:38:31
12 Q Did you base this comment on something 09:38:32
13 that Dr. Kitchens told you? 09:38:33
14 A Yes. 09:38:36
15 Q You did not see any record showing that 09:38:39
16 Dr. Kitchens was diagnosed with ADHD in early 09:38:41
17 childhood, correct? 09:38:44
18 A Correct. 09:38:46
19 Q And you did not see any record showing 09:38:48
20 that Dr. Kitchens was treated for ADHD in early 09:38:50
21 childhood, correct? 09:38:53
22 A Correct. 09:38:55
23 Q And I apologize if I asked this question 09:39:04
24 earlier, but the DIVA 2.0 report, that is based on 09:39:06
25 the patient's self-report to you, correct? 09:39:10

1 A Correct. 09:39:13

2 Q The patient is describing his -- what he 09:39:14

3 feels are his symptoms of ADHD? 09:39:18

4 A The symptoms and the impairment in life. 09:39:24

5 Q As described by the patient, correct? 09:39:30

6 A Yes. 09:39:33

7 Q What is the Achenbach System of 09:39:40

8 Empirically Based Assessment? 09:39:42

9 A That is empirically based assessment for 09:39:48

10 a variety of diagnoses. 09:39:54

11 MS. MEW: And, Michael, you can take down 09:40:20

12 CB-2. 09:40:21

13 Q And can you describe, what is the process 09:40:22

14 for the ASEBA? 09:40:25

15 A The general process is that the client 09:40:27

16 and one other person at least, one other person 09:40:33

17 in -- who is close with them currently answers a 09:40:39

18 list of questions. There's approximately 115 or 09:40:49

19 more questions with specific behaviors, symptoms of 09:40:57

20 a variety of mental health disorders. It looks 09:41:08

21 at -- it has a specific ADHD scale that it looks 09:41:17

22 directly at the symptoms as listed in the DSM-5-TR, 09:41:22

23 and it gives scales and then a written report from 09:41:29

24 the computerized -- it -- well, it compiles the 09:41:42

25 information from, so I don't have to do the 09:41:51

1 handwritten scoring. 09:41:54

2 Q And I saw you produced the scales. Do 09:41:59

3 the questions and answers -- do the questions and 09:42:04

4 answers exist as a document in your system? 09:42:09

5 A They don't. I feel sure they exist. I 09:42:15

6 don't have them. 09:42:25

7 Q Dr. Kitchens filled out one of these 09:42:41

8 ASEBA questionnaires as part of your evaluation, 09:42:44

9 correct? 09:42:47

10 A Correct. 09:42:48

11 Q And you discuss the report, the results 09:42:49

12 of his ASEBA questionnaire in your evaluation, 09:42:55

13 correct? 09:42:59

14 A Correct. 09:43:00

15 Q And Dr. Kitchens' spouse, Amelia 09:43:01

16 Kitchens, filled out one of the ASEBA 09:43:06

17 questionnaires as well, correct? 09:43:12

18 A Correct. 09:43:14

19 Q And you discuss Amelia Kitchens' report 09:43:15

20 in your evaluation, correct? 09:43:23

21 A Correct. 09:43:25

22 Q Dr. Kitchens mother, Missie King, also 09:43:27

23 filled out an ASEBA questionnaire, correct? 09:43:30

24 A Correct. 09:43:34

25 Q And you received her responses? 09:43:35

1 A Yes. 09:43:38

2 MS. MEW: Michael, if you could please 09:43:47

3 pull up CB-4. 09:43:48

4 (Defendant's Exhibit CB-4 was marked for 09:43:52

5 identification and is attached to the transcript.) 09:43:52

6 Q If you could scroll through this, 09:44:04

7 Michael, and give Ms. Bacon a chance just to see 09:44:06

8 what's here. 09:44:12

9 Do you recognize this document, 09:44:35

10 Ms. Bacon? 09:44:37

11 A I do, yes. 09:44:38

12 MS. MEW: If we could go back to the 09:44:39

13 first page, please. 09:44:41

14 Q Are these the scale scores from Ms. King? 09:44:48

15 A According to the document, it says 09:44:55

16 informant, Missie King. 09:44:58

17 Q If we turn to page 2 -- 09:45:03

18 MS. MEW: Michael, can you turn to page 09:45:13

19 2, please. 09:45:15

20 Q Ms. King did not report a clinical level 09:45:30

21 of problems with attention, correct? 09:45:32

22 A Correct. 09:45:38

23 MS. MEW: And if we could please turn to 09:45:42

24 page 3. I'm sorry, page 4. 09:45:44

25 Q Ms. King did not report a clinical level 09:45:56

1 of ADHD problems, correct? 09:45:58

2 A Correct. 09:46:07

3 Q For all of the categories of Ms. King's 09:46:07

4 report, the reports are in the normal range, 09:46:12

5 correct? 09:46:14

6 A Correct. 09:46:17

7 Q You did not list Ms. King's ASEBA report 09:46:23

8 under your assessment procedures in your evaluation 09:46:31

9 report, correct? 09:46:36

10 A Correct. 09:46:37

11 Q But you did, in fact, administer this 09:46:37

12 assessment to Ms. King? 09:46:40

13 A Before I understood that they do not live 09:46:42

14 together, I misunderstood that when we first spoke, 09:46:46

15 I believed that they lived together. And because 09:46:50

16 this test asks for information specifically during 09:46:56

17 the last six months. Once I did the second 09:47:00

18 interview and realized when I got this that they 09:47:05

19 don't live together and therefore she doesn't have 09:47:10

20 close interaction with him during the last six 09:47:13

21 months, therefore this test was not valid. 09:47:17

22 I did -- as you saw in the report, I 09:47:21

23 already had it written down in the assessment 09:47:23

24 procedures, because I had started the report as I 09:47:26

25 was -- as you saw. But that was why I didn't 09:47:28

1 include it, because it was not valid after all. 09:47:33

2 Q Would Ms. King be a useful informant for 09:47:37

3 Dr. Kitchens' childhood symptoms and impairment of 09:47:41

4 ADHD? 09:47:44

5 A Yes, but this test asks for current 09:47:47

6 questions, the questions are worded as current. 09:47:49

7 And so she didn't know -- yes, if we could -- it 09:47:53

8 sounds like, from what -- at the last hearing, that 09:47:57

9 she has a good understanding of his childhood. So, 09:48:02

10 but this isn't asking about childhood symptoms. 09:48:07

11 MS. MEW: And we can take this document 09:48:11

12 down. 09:48:13

13 Q Slightly different question. Did you 09:48:17

14 discuss with Ms. King -- did you have any 09:48:20

15 discussions with Ms. King as part of your 09:48:25

16 evaluation? 09:48:27

17 A No. 09:48:27

18 Q So, you did not seek any kind of 09:48:28

19 collateral information from her about Dr. Kitchens' 09:48:30

20 report of childhood symptoms or impairment? 09:48:34

21 A I did not. 09:48:39

22 Q There are other assessments that you 09:48:50

23 administered to Dr. Kitchens that you did not list 09:48:52

24 under your assessment procedures, correct? 09:48:55

25 A Not that I know of as you say that. 09:49:01

1 Q Did you administer a PHQ-9 form? 09:49:05

2 A Oh. Yes. 09:49:09

3 Q Did you administer a GAD-7 form? 09:49:12

4 A Back up, I should -- if it's in the 09:49:16

5 chart, then yes. As standard procedure, when I 09:49:18

6 open any contact with anyone that is immediately 09:49:22

7 sent to them. So, its standard procedure. 09:49:29

8 Q But you did not rely on those assessments 09:49:34

9 as part of your evaluation? 09:49:40

10 A No. 09:49:41

11 Q Is it important to conduct a differential 09:49:50

12 diagnosis as part of an ADHD assessment? 09:49:52

13 A Yes. 09:49:54

14 Q And the DSM requires this, correct? 09:49:56

15 A Yes. 09:50:01

16 Q Did you conduct a differential diagnosis 09:50:02

17 as part of your ADHD evaluation of Dr. Kitchens? 09:50:04

18 A As you see on the ASEBA, there are the 09:50:07

19 different scales, and each -- if you go to the page 09:50:10

20 that stays DSM-oriented scales, each of those 09:50:15

21 scales, if you look at the questions listed and the 09:50:22

22 number by them, those are direct symptoms as listed 09:50:29

23 in the DSM-5-TR. 09:50:35

24 Q Did you rule out that -- did you rule out 09:50:46

25 that the symptoms you attributed to ADHD are not 09:50:53

1 attributable to any other mental disorder? 09:50:59

2 A I would need to look at the report to see 09:51:06

3 the diagnosis. 09:51:09

4 MS. MEW: Michael, can we please pull up 09:51:15

5 CB-1. Thank you. 09:51:19

6 Q Ms. Bacon, if you'd like, you could ask 09:51:31

7 to turn to a particular page, or would you like us 09:51:33

8 to scroll down until you get to -- 09:51:35

9 A Page 8. So, I put attention deficit 09:51:39

10 hyperactivity disorder, combined presentation. 09:51:49

11 MS. MEW: Michael, you can take CB-1 09:52:18

12 down. 09:52:20

13 Q You administered the MOXO to 09:52:26

14 Dr. Kitchens, correct? 09:52:28

15 A Correct. 09:52:29

16 Q And the MOXO is a continuous performance 09:52:30

17 test, or CPT? 09:52:33

18 A Yes, it's actually a d-CPT, which is a 09:52:34

19 distracted CPT. 09:52:38

20 Q Can you explain to me how this test 09:52:44

21 works. 09:52:46

22 A Yes. This test works -- it's 09:52:47

23 computerized, and the client is given the 09:52:51

24 instructions to watch for a certain picture, and 09:52:55

25 they are supposed to click every time they see it. 09:53:06

1 And they are given a variety of pictures similar or 09:53:09
2 different and they are then supposed to continue to 09:53:16
3 focus and click on the picture when they see the 09:53:21
4 picture only. There are sounds that come up and 09:53:26
5 visual distractors. 09:53:30

6 Q What is it a picture of, what are you 09:53:34
7 looking for a picture of? 09:53:36

8 A It is -- for the adults it is a picture 09:53:39
9 of a -- I believe an ace of hearts, it's a playing 09:53:42
10 card. So, sometimes it shows that, sometimes it's, 09:53:50
11 I believe, of the hearts, sometimes it will show 09:53:57
12 the diamonds. And it will be similar, but what 09:54:00
13 it's looking at -- so, it's looking at the -- if 09:54:05
14 you see that specific picture. 09:54:09

15 Q And it takes about 20 minutes to take the 09:54:16
16 MOXO? 09:54:18

17 A 20, 25. It depends. 09:54:24

18 Q The MOXO is not a reading test, correct? 09:54:27

19 A No. 09:54:30

20 Q Not -- and it's not a test of reading 09:54:34
21 fluency? 09:54:38

22 A No. 09:54:38

23 Q And the individual taking the MOXO, 09:54:39
24 they're not asked substantive questions that 09:54:43
25 they're answering, they're looking at these 09:54:46

1 pictures and responding to what they see, correct? 09:54:48

2 A It is simply a test of continual 09:54:51

3 performance. 09:54:55

4 Q CPT test results themselves are not 09:55:08

5 diagnostic of ADHD, correct? 09:55:11

6 A Correct. 09:55:13

7 DR. KITCHENS: Excuse me. Caroline? 09:55:28

8 MS. MEW: Yes. 09:55:30

9 DR. KITCHENS: For the court reporter, 09:55:31

10 this is Dr. Marcus Kitchens speaking. We've been 09:55:32

11 going through an hour now. Do you think that we 09:55:36

12 can take a five-minute break and give Ms. Bacon a 09:55:38

13 break? 09:55:43

14 MS. MEW: Of course. 09:55:44

15 DR. KITCHENS: Thank you. 09:55:45

16 THE VIDEOGRAPHER: Stand by for video. 09:55:46

17 We are going off the record. The time is 9:55 a.m. 09:55:48

18 (Recess taken from 9:55 a.m. to 10:01 09:55:59

19 a.m.) 09:55:59

20 THE VIDEOGRAPHER: We're back on the 10:01:23

21 record. The time is 10:01 a.m. 10:01:24

22 BY MS. MEW: 10:01:30

23 Q Ms. Bacon, before the break we were 10:01:31

24 talking about the MOXO. 10:01:32

25 MS. MEW: Can we pull up CB-6, please, 10:01:38

1 Michael. 10:01:40

2 (Defendant's Exhibit CB-6 was marked for 10:02:01

3 identification and is attached to the transcript.) 10:02:01

4 MS. MEW: And, Michael, if you could just 10:02:01

5 click through each page. 10:02:03

6 BY MS. MEW: 10:02:34

7 Q Ms. Bacon, do you recognize this as the 10:02:34

8 MOXO d-CPT report for the test that Dr. Kitchens 10:02:38

9 took? 10:02:41

10 A Yes. 10:02:47

11 Q If you look at the first box toward the 10:02:48

12 top of the page, it states, medication, none. Do 10:02:50

13 you see that? 10:02:53

14 A I do. 10:02:53

15 Q Did you ask Dr. Kitchens not to take his 10:02:55

16 medications on the day he took the MOXO? 10:02:58

17 A No. 10:03:02

18 Q How would this field for medications, 10:03:06

19 none, be completed? 10:03:07

20 A By mistake on my part. 10:03:12

21 Q Do you know whether Dr. Kitchens took 10:03:16

22 Adderall on the day that he took the MOXO test? 10:03:18

23 A No. Well, I wasn't there with him, so -- 10:03:33

24 Q Did you ask him if he had taken Adderall 10:03:37

25 on the day he took this test? 10:03:39

1 A I don't remember. 10:03:42

2 Q And did you ask him if he had taken 10:03:46

3 propanolol on the day he took this test? 10:03:48

4 A I don't remember. 10:03:52

5 Q But you think that this statement, none, 10:03:55

6 is a mistake? 10:03:56

7 A No, I only mean that it could be a 10:03:58

8 mistake if he did have it and I didn't put it on 10:04:00

9 there. He could also have not taken it. I don't 10:04:03

10 know, because I wasn't with him. I don't remember. 10:04:08

11 Q I believe you mentioned earlier that the 10:04:18

12 MOXO has some type of symptom validity element to 10:04:20

13 this particular test. 10:04:24

14 A Uh-huh. 10:04:25

15 Q And again, you can ask Michael to flip 10:04:26

16 through to any page, but can you show me where in 10:04:29

17 this report the results of that embedded symptom 10:04:32

18 validity test show up in here? 10:04:35

19 THE WITNESS: Scroll to the next page, 10:04:39

20 let me see. And if you can scroll down. Go on -- 10:04:41

21 can you go down to the next page, and on down to 10:04:54

22 maybe page 4. 10:05:00

23 A So, on my end it has -- there's a green 10:05:08

24 light system that on my end that I see. It's not 10:05:17

25 printed on here directly. There is in general, 10:05:23

1 there's a summary. If it was not valid, under that 10:05:32
2 statement in the summary it would say it's not 10:05:36
3 valid. But it doesn't -- it doesn't have it 10:05:41
4 directly on here. 10:05:45

5 Q Understood. 10:05:48

6 MS. MEW: We can take this document down. 10:05:51

7 And let's pull up the evaluation report again, 10:05:59
8 please. That's CB-1. If we could go to page 3, 10:06:01
9 please. And then if you could please scroll down 10:06:16
10 to the bottom of page. And actually, if you could 10:06:29
11 show the bottom of 3 going into page 4, that 10:06:32
12 paragraph. 10:06:36

13 Q Ms. Bacon, in the paragraph that carries 10:06:43
14 over from page 3 to 4, can you see that on your 10:06:47
15 screen? 10:06:51

16 A I can. 10:06:52

17 Q Okay. The second sentence states, 10:06:53
18 "Despite Dr. Kitchens successfully completing 10:06:55
19 medical school, the symptoms have had a great 10:07:00
20 impact on his work and education." And this is a 10:07:02
21 reference to the symptoms of ADHD, correct? 10:07:06

22 A Correct. 10:07:09

23 Q What is the basis for your opinion that 10:07:11
24 the symptoms of ADHD have had a great impact on 10:07:14
25 Dr. Kitchens' work and education? 10:07:17

1 A From our interview, when we discussed the 10:07:21
2 impact that he had of the different ways he had to 10:07:25
3 work to accommodate his symptoms that went above 10:07:30
4 what someone without ADHD would have to do to 10:07:35
5 accommodate. 10:07:38

6 Q Do you have, are you aware of any 10:07:53
7 objective evidence showing that Dr. Kitchens 10:07:55
8 experiences impairment in work? 10:07:59

9 A What do you mean by objective? 10:08:07

10 Q Anything other than what Dr. Kitchens 10:08:10
11 told you. 10:08:12

12 A I'm not sure how I would get that. 10:08:22

13 Q Did you review any work evaluations? 10:08:26

14 A No. 10:08:30

15 Q Did you ask to see any type of work 10:08:32
16 evaluations for Dr. Kitchens? 10:08:37

17 A No. 10:08:39

18 Q Are you aware of his general employment 10:08:39
19 history? 10:08:41

20 A No. 10:08:41

21 Q Do you know if Dr. Kitchens participated 10:08:45
22 in any internships during medical school? 10:08:47

23 A I don't remember. It would be in the 10:08:52
24 report. 10:08:57

25 Q Do you know how he performed in those 10:09:01

1 board exams or reference to the United States 10:10:32

2 Medical Licensing Examination? 10:10:36

3 A At the time that I wrote that, I did not 10:10:39

4 know the full name of what it was. I knew that it 10:10:41

5 was exams and I knew the general term "board 10:10:47

6 exams," but I did not know the extent. 10:10:52

7 Q I understand. You're referring -- are 10:10:56

8 you referring to the exams he needs to take to be 10:10:58

9 licensed to practice medicine? 10:11:01

10 A Yes. 10:11:06

11 Q Okay. Did Dr. Kitchens inform you that 10:11:07

12 he was having difficulty completing the USMLE 10:11:33

13 examinations, or board examinations? 10:11:39

14 A We discussed the need for accommodations 10:11:42

15 in order to complete -- to -- in order -- well, 10:11:49

16 accommodations. I don't know that I was aware of 10:11:57

17 the specific tests. I could have been told, but I 10:12:00

18 don't remember that. 10:12:13

19 Q And when you're referring to completing 10:12:26

20 the board exams, do you mean finishing the exams 10:12:28

21 within the standard time frames, is that what 10:12:34

22 you're referring to, or just overcoming passing the 10:12:38

23 board exams generally? 10:12:42

24 A I'm referring to completing the board 10:12:48

25 exams without the symptoms of ADHD negatively 10:12:56

1 impacting his performance. 10:13:03

2 Q Did Dr. Kitchens tell you that he ran out 10:13:24

3 of time taking these tests? 10:13:28

4 A Not that I remember. Not that I 10:13:36

5 remember. If he did, it's in the -- I would have 10:13:38

6 recorded that, I would think. 10:13:46

7 Q What is the basis for your opinion that 10:13:59

8 Dr. Kitchens' difficulty completing the board exams 10:14:01

9 seems directly linked to his symptoms of ADHD? 10:14:04

10 A So, based on the explanation of symptoms, 10:14:15

11 based on -- so, during the MOXO the client is on 10:14:19

12 the computer taking the exam, or the test, but I am 10:14:27

13 also on a different device watching. The symptoms 10:14:36

14 that he reported fit with what I observed during 10:14:44

15 the assessment. 10:14:50

16 Q And what did you observe? 10:14:54

17 A I observed that he had difficulty sitting 10:14:56

18 still during the tests. That he was actively 10:15:01

19 engaged, but struggling to stay on task, struggling 10:15:07

20 to stay on task. And I saw that when he would make 10:15:18

21 a mistake he would -- he got progressively more 10:15:21

22 what appeared to be distressed by his symptoms when 10:15:39

23 he was taking the test, as I would say evidenced by 10:15:43

24 wringing his hands, rocking, kind of blowing, you 10:15:51

25 know, really showing symptoms of physical 10:16:01

1 expression of ADHD symptoms during my observation. 10:16:09

2 Which matched what he reported to me verbally 10:16:18

3 through the DIVA and what matched what he and his 10:16:22

4 wife reported through the ASEBA, they were all 10:16:29

5 matching. 10:16:36

6 So, that's where my statement came from, 10:16:43

7 was my observation, his report, his MOXO test, his 10:16:45

8 ASEBA, and his wife's report. 10:16:52

9 Q Are there reasons other than ADHD 10:17:43

10 symptoms that someone may not be able to complete a 10:17:46

11 licensing examination? 10:17:49

12 A Yes. 10:17:55

13 Q Someone could be underprepared? 10:17:56

14 A I suppose they could be. 10:18:03

15 Q They could be having a bad day? 10:18:05

16 A In theory, I'm sure. 10:18:09

17 Q The material could be very challenging? 10:18:11

18 A Yes. 10:18:20

19 Q You did not conduct any type of 10:18:22

20 educational assessment of Dr. Kitchens, correct? 10:18:24

21 A Correct. 10:18:27

22 Q You did not measure his IQ? 10:18:28

23 A I did not. 10:18:31

24 Q And you did not measure his academic 10:18:32

25 skills, such as reading fluency? 10:18:35

1 A I did not. 10:18:38

2 Q We touched on this a little bit earlier, 10:18:48

3 but just so that I'm clear, did you discuss the 10:18:50

4 USMLE examinations with Dr. Kitchens as part of 10:18:52

5 your evaluation? 10:18:57

6 A I don't remember. 10:19:02

7 Q So, do you know which examinations he may 10:19:11

8 have taken? 10:19:13

9 A No. 10:19:15

10 Q Or what his results were? 10:19:16

11 A No. 10:19:18

12 Q Did he provide you with score reports of 10:19:19

13 any type? 10:19:21

14 A If he did, it would be in the -- in the 10:19:29

15 chart. 10:19:33

16 Q Since I represent to you that I didn't 10:19:37

17 receive from you any copies of his USMLE test score 10:19:39

18 reports, we can safely conclude that he did not 10:19:43

19 provide you with copies of those? 10:19:46

20 A If you don't have it, I don't have it. 10:19:47

21 Q Okay. 10:19:49

22 MS. MEW: Let's scroll down to page 7, 10:19:55

23 please, in CB-1. 10:20:19

24 Q Looking at the summary and interpretation 10:20:27

25 section. Third paragraph down, you conclude that 10:20:30

1 "Dr. Kitchens exceeds the number of symptoms for 10:20:49
2 diagnosis of ADHD combined presentation under the 10:20:53
3 DSM," correct? 10:20:57

4 A Correct. 10:20:58

5 Q And this was based on Dr. Kitchens' 10:20:58
6 report of those symptoms, correct? 10:21:01

7 A Correct. 10:21:03

8 Q You also state on page 7, as noted 10:21:08
9 earlier, "Markcus's behavior has been seen since 10:21:11
10 childhood, diagnosed by multiple practitioners, and 10:21:15
11 has been provided medication for the disorder since 10:21:18
12 2013." Do you see where that is? 10:21:21

13 A Yes. 10:21:25

14 Q This was also based on what Dr. Kitchens 10:21:28
15 reported to you, correct? 10:21:31

16 A Yes. 10:21:34

17 Q You diagnosed Dr. Kitchens with ADHD 10:21:45
18 combined presentation, correct? 10:21:49

19 A Correct. 10:21:52

20 MS. MEW: And you can take down CB-1 for 10:21:52
21 right now, thank you. 10:21:54

22 Q You did not diagnose him with any other 10:21:58
23 disorder, correct? 10:22:01

24 A If it is not on the report, then correct. 10:22:02

25 Q You did not diagnose Dr. Kitchens with a 10:22:08

1 learning disorder? 10:22:10

2 A No. 10:22:11

3 Q You did not diagnose Dr. Kitchens with 10:22:12

4 anxiety? 10:22:15

5 A If it is not on there, I did not. 10:22:17

6 MS. MEW: Actually, my apologies. 10:22:28

7 Michael, if you wouldn't mind pulling up CB-1 10:22:29

8 again, it might be helpful to reference it. Will 10:22:35

9 you please scroll to the last page, page 8. 10:22:39

10 Q You recommended that Dr. Kitchens receive 10:22:52

11 accommodations when taking tests, including the 10:22:54

12 USMLE, correct? 10:22:57

13 A I said when taking tests such as board 10:23:00

14 exams. I did not know the name of the test. 10:23:03

15 Q All right, that's fine, that doesn't 10:23:06

16 matter. You recommended that Dr. Kitchens receive 10:23:08

17 accommodations when taking tests, including the 10:23:12

18 board exams, correct? 10:23:15

19 A Correct. 10:23:17

20 Q And you understand the board exams to be 10:23:17

21 his medical licensing examinations? 10:23:18

22 A I understood that they were examinations. 10:23:22

23 I did not -- I do not understand necessarily the 10:23:25

24 full steps of what they are. But in general, I 10:23:27

25 understand that they are board exams. 10:23:30

1 Q Okay. And you recommended that he 10:23:33
2 receive extra time, and specifically double time; 10:23:37
3 is that correct? 10:23:43
4 A That is correct. 10:23:44
5 Q Do you know how long the exams that you 10:23:50
6 refer to as board exams are? 10:23:53
7 A I don't know off the top of my head. 10:24:07
8 Q Let me ask, is it fair to say that you 10:24:12
9 were not providing a specific recommendation with 10:24:14
10 respect to step 1 of the USMLE? 10:24:16
11 A I was giving a general recommendation. 10:24:23
12 Q And you were not making a recommendation 10:24:26
13 specific to step 2 CK of the USMLE? 10:24:28
14 THE WITNESS: I apologize, I -- I'm 10:24:33
15 sorry, the -- okay. Are you still there? 10:24:39
16 MS. MEW: Yeah, have you lost your -- can 10:24:44
17 we go off the record for just a minute. 10:24:49
18 THE VIDEOGRAPHER: Stand by. We are 10:24:53
19 going off the record. The team is 10:24 a.m. 10:24:54
20 (Off the record discussion.) 10:25:24
21 THE VIDEOGRAPHER: We're back on the 10:26:24
22 record. The time is 10:26 a.m. 10:26:25
23 BY MS. MEW:
24 Q And just for my own benefit, I'll ask the 10:26:31
25 court reporter to please repeat the last question 10:26:34

1 that I asked. 10:26:36

2 (The reporter read the pending question 10:27:02

3 as follows: 10:27:02

4 "Q And you were not making a 10:27:02

5 recommendation specific to step 2 CK of the 10:27:02

6 USMLE?" 10:27:02

7 A Do I answer that now? 10:27:03

8 Q Yes. 10:27:06

9 A I was giving a general recommendation. 10:27:06

10 Q And I might be asking a question I 10:27:14

11 already asked again, but just to put this in 10:27:16

12 perspective, do you know how long step 1 of the 10:27:18

13 USMLE is? 10:27:21

14 A I don't remember. 10:27:24

15 Q Do you know how long step 2 CK of the 10:27:27

16 USMLE is? 10:27:30

17 A Not off the top of my head. 10:27:32

18 Q Do you think that at some point you had 10:27:34

19 this information? 10:27:38

20 A I could have, but I don't -- if I did, I 10:27:40

21 don't remember it. 10:27:42

22 Q If you thought that it was important to 10:27:52

23 your recommendation, would you have discussed it in 10:27:54

24 your report? 10:27:56

25 A If the time of the test was important? 10:27:59

1 Q Yes. 10:28:07

2 A If I was making a specific 10:28:14

3 recommendation, I would have. 10:28:16

4 Q But you were not making a specific 10:28:18

5 recommendation for step 1 or step 2 CK of the 10:28:20

6 USMLE? 10:28:24

7 A I was making a recommendation, just a 10:28:26

8 general recommendation when taking tests such as 10:28:28

9 board exams as written in my report. 10:28:33

10 Q Do you know how the USMLE is 10:28:36

11 administered? 10:28:38

12 A I've never taken the exam. 10:28:46

13 Q I understand. So, you don't know if it's 10:28:47

14 a paper and pencil test or a computerized test? 10:28:49

15 A Correct. 10:28:54

16 Q And do you have any idea what the 10:28:54

17 questions on the test look like? 10:28:56

18 A I am not a medical professional, so -- 10:28:57

19 Q Okay. And do you have any idea of how 10:29:01

20 long the test day itself is? 10:29:03

21 A No, not as far as I can remember. 10:29:06

22 Q Did you look up the type of 10:29:17

23 accommodations that are generally available on the 10:29:19

24 USMLE examination to prepare your accommodation 10:29:22

25 recommendations? 10:29:27

1 A No. 10:29:28

2 Q Did Dr. Kitchens provide you with a copy 10:29:33

3 of NBME's documentation guidelines for 10:29:37

4 accommodation requests for you to use in preparing 10:29:40

5 your report and recommendations? 10:29:42

6 A As far as I know, no. If he did, it 10:29:46

7 would be in the report. Or in the chart that I 10:29:48

8 sent you. 10:29:51

9 Q In the documents you sent me? 10:29:51

10 A The documentation that you sent me, yes. 10:29:53

11 Q In your recommendations you also 10:30:02

12 recommend allowance of extra breaks to move during 10:30:04

13 testing. Do you see that? 10:30:06

14 A Uh-huh. 10:30:09

15 Q Is this also a general recommendation and 10:30:09

16 not specific to the USMLE? 10:30:09

17 A Yes. 10:30:12

18 Q So, I take it you do not know how much 10:30:14

19 break time examinees get under standard 10:30:19

20 administration of the USMLE? 10:30:22

21 A No. 10:30:24

22 Q And you don't know how Dr. Kitchens has 10:30:25

23 used that break time in his prior test attempts? 10:30:28

24 A Correct. 10:30:32

25 Q What do you know about Dr. Kitchens' 10:30:37

Transcript of Christina Bacon, LPP

Conducted on April 13, 2023

58

1	history of taking standardized tests?	10:30:40
2	A I don't know what that question is	10:30:49
3	asking.	10:30:51
4	Q Do you know if he took the ACT exam?	10:30:53
5	Well, let me scratch that.	10:30:56
6	Do you know what the ACT exam is?	10:30:58
7	A Yes.	10:31:01
8	Q Do you know if Dr. Kitchens took that	10:31:05
9	exam?	10:31:07
10	A No. I don't know.	10:31:07
11	Q Do you know if he has ever received	10:31:08
12	accommodations on any other standardized test?	10:31:10
13	A We would have to look at the report	10:31:16
14	that -- of the information given, provided. I	10:31:23
15	don't -- I don't know off the top of my head.	10:31:27
16	Q Do you know if he took the medical	10:31:37
17	college admission test?	10:31:39
18	A I -- I don't know. I would -- well, I	10:31:47
19	don't know.	10:31:51
20	Q Or whether he received accommodations on	10:31:52
21	that test?	10:31:54
22	A I don't know.	10:31:55
23	Q Or how he performed?	10:31:55
24	A I can only make assumptions that I have.	10:31:58
25	No, I don't know.	10:32:01

Transcript of Christina Bacon, LPP

Conducted on April 13, 2023

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1	Q	Are you familiar with the standards for	10:32:05
2		disability under the Americans with Disabilities	10:32:07
3		Act?	10:32:08
4	A	I understand that there is one. I don't	10:32:12
5		know that I could list it for you.	10:32:13
6	Q	Are you applying those standards when you	10:32:16
7		are making your report and recommendation?	10:32:19
8	A	Not specifically. I didn't -- I did not	10:32:22
9		reference them while I was making the	10:32:25
10		recommendations.	10:32:27
11	Q	Are you referencing them generally?	10:32:28
12	A	I don't know. I don't know what you're	10:32:39
13		asking, I'm sorry.	10:32:40
14	Q	Sure. Did you make any -- did you draw	10:32:41
15		any conclusions based on whether Dr. Kitchens is	10:32:45
16		disabled within the opinion of the ADA?	10:32:48
17	A	I made the recommendations based on the	10:32:54
18		diagnosis from the DSM-5-TR.	10:32:57
19	Q	Okay.	10:33:01
20		MS. MEW: If we could take down CB-1,	10:33:12
21		please, and just quickly pull up CB-9.	10:33:14
22		(Defendant's Exhibit CB-9 was marked for	10:33:25
23		identification and is attached to the transcript.)	10:33:25
24		MS. MEW: And if you could just quickly	10:33:31
25		scroll through that.	10:33:33

1 Q Ms. Bacon, I just wanted to ask if you 10:33:47
2 recognized this notice of deposition and subpoena. 10:33:51
3 A Yes. 10:33:54
4 Q And you're appearing today pursuant to 10:33:54
5 that notice and subpoena correct? 10:33:58
6 A Correct. 10:34:01
7 MS. MEW: I may be done or almost done. 10:34:01
8 And I want to be mindful of your time, Ms. Bacon, 10:34:03
9 but if we could take just a five-minute break so I 10:34:07
10 can just check over and see if I have any other 10:34:09
11 questions. 10:34:12
12 THE WITNESS: Thank you. 10:34:12
13 MS. MEW: I would appreciate it. Thank 10:34:12
14 you. 10:34:15
15 THE VIDEOGRAPHER: Stand by for video. 10:34:16
16 We're going off the record. The time is 10:34 a.m. 10:34:17
17 (Recess taken from 10:34 a.m. to 10:41 10:34:53
18 a.m.) 10:34:53
19 THE VIDEOGRAPHER: We're back on the 10:41:57
20 record. The time is 10:41 a.m. 10:41:58
21 MS. MEW: Ms. Bacon, you're still on 10:42:06
22 mute. 10:42:10
23 THE WITNESS: Thank you. 10:42:11
24 MS. MEW: Sure. 10:42:11
25 BY MS. MEW: 10:42:12

1 Q Did Dr. Kitchens know that you were 10:42:13
2 observing him when he was taking the MOXO? 10:42:15
3 A Yes. 10:42:17
4 MS. MEW: I do not have any further 10:42:18
5 questions. 10:42:19
6 DR. KITCHENS: Okay. It's my turn now, 10:42:24
7 right, correct, to ask any questions I might have? 10:42:27
8 All right. 10:42:31
9 EXAMINATION BY COUNSEL FOR 10:42:31
10 PLAINTIFF, MARKCUS KITCHENS, JR. 10:42:31
11 BY DR. KITCHENS: 10:42:32
12 Q Hi, Ms. Bacon. How are you doing this 10:42:33
13 morning? 10:42:35
14 A I'm fine, thanks. 10:42:36
15 Q Good, good. I just wanted to have a 10:42:37
16 couple of follow-up questions for you, okay? 10:42:40
17 A Yes. 10:42:42
18 Q So, can you talk to me a little bit about 10:42:44
19 your training, how long you have been evaluating 10:42:46
20 for ADHD. 10:42:50
21 A I have been working as a clinician since 10:42:52
22 2003. 10:43:00
23 Q Okay. And when we talk about ADHD 10:43:00
24 specifically, is there a particular degree that you 10:43:03
25 can specialize in, say, ADHD, or I am an ADHD 10:43:07

1 specialist? 10:43:13

2 A Not as far as I know. 10:43:15

3 Q Okay. When you were evaluating me, where 10:43:17

4 was I located? 10:43:22

5 A At your home. 10:43:24

6 Q Do you remember specifically where in my 10:43:26

7 home? 10:43:28

8 A In your office, as far as I understood. 10:43:29

9 Q Yes. And can you please describe what 10:43:32

10 you observed in my office, in my office space, when 10:43:35

11 doing my evaluation? 10:43:45

12 A I observed -- you showed me around to 10:43:46

13 show me the different things that you had done to 10:43:48

14 accommodate yourself to focus, as in the dark 10:43:51

15 curtains over your window to prevent you from being 10:43:59

16 distracted by the outside, the whiteboards on the 10:44:02

17 back that had your schedule or reminders. 10:44:09

18 I know that you would put -- you 10:44:14

19 explained that you put your phone on, like, do not 10:44:17

20 disturb, so that you weren't distracted by phone 10:44:20

21 calls during our conversations or -- I know that -- 10:44:23

22 and, you know, just the -- you had the treadmill in 10:44:29

23 the back that you said that, you know, you would 10:44:33

24 study whenever, to have movement while you were 10:44:34

25 concentrating. 10:44:37

1 Q Thank you. 10:44:39

2 Do you remember or recall different 10:44:40

3 techniques that I did to limit noise? 10:44:45

4 A Yes. I know that you said that you used 10:44:55

5 noise canceling headphones or some kind of 10:44:57

6 headphone. I know there are different kinds. 10:44:59

7 Q With these things that you've just stated 10:45:02

8 that I did to keep myself focused, would you say 10:45:04

9 that this is outside of the norm? 10:45:07

10 A Outside of the norm from -- 10:45:14

11 Q For someone that does not have ADHD. 10:45:16

12 A Yes, I would say that that is 10:45:20

13 accommodations, yes. So, that's outside the norm 10:45:22

14 of a person without ADHD. 10:45:27

15 Q Okay, thank you. 10:45:29

16 We talked a little bit about the history 10:45:33

17 when you were speaking with Ms. Mew. Do you recall 10:45:36

18 me ever sending you medical records? 10:45:43

19 A You did send medical records. 10:45:45

20 Q Was those medical records -- what do you 10:45:49

21 remember entailed in those medical records? 10:45:52

22 A I remember they had history. 10:45:58

23 Q Uh-huh. And -- 10:46:02

24 A I don't know that I could adequately give 10:46:04

25 a good description of all of them. 10:46:08

1 Q Would you say that those medical records 10:46:12
2 that I sent to you were medical records from 10:46:14
3 several different physicians or medical providers? 10:46:18
4 A Yes. 10:46:23
5 Q And do you recall the medications of 10:46:25
6 Adderall and propanolol being part of those medical 10:46:32
7 records? 10:46:36
8 A Yes. I would -- if they were on the list 10:46:40
9 that I put, then yes. 10:46:44
10 Q Okay, thank you. 10:46:48
11 And for -- so, this particular exam that 10:46:50
12 you gave that you conducted with me, the MOXO, is 10:46:58
13 there a way for you to know whether or not a person 10:47:02
14 is faking their symptoms, or trying to cheat the 10:47:07
15 system, or malingering? 10:47:11
16 A The -- on the MOXO, the ability test part 10:47:17
17 of it, if it detects that the person is not -- is 10:47:22
18 faking, then -- or malingering, my understanding of 10:47:28
19 the validity test is that it says -- you know, 10:47:35
20 again, in the green light system, the green, 10:47:37
21 yellow, red, that it would indicate it does not -- 10:47:41
22 it is not a valid test. 10:47:45
23 Q And what light did you receive when I was 10:47:49
24 doing my exam? 10:47:51
25 A Green. Which indicates valid. 10:47:53

1 Q Okay. When you are doing an evaluation 10:47:56
2 on an adult in their thirties, would you typically 10:48:01
3 ask for a high school transcript for doing an ADHD 10:48:07
4 evaluation? 10:48:11
5 A No. 10:48:11
6 Q Would you normally ask for a past test, 10:48:12
7 testing transcript -- 10:48:20
8 A No. 10:48:22
9 Q -- for an adult? 10:48:22
10 Would you ask them for evaluations from 10:48:25
11 their work if you were evaluating them for adult 10:48:27
12 ADHD? 10:48:32
13 A No. 10:48:34
14 Q I want to go back to the medications, the 10:48:41
15 propanolol and for the Adderall. Are you -- when 10:48:44
16 it comes down to Adderall, if a person is on 10:48:51
17 Adderall, what is the most common diagnosis that a 10:48:55
18 person would have for a physician to prescribe for 10:49:00
19 someone to be taking Adderall? 10:49:05
20 A As a nonphysician, when someone comes 10:49:10
21 into my office with a prescription of Adderall, it 10:49:14
22 is generally ADHD. 10:49:21
23 Q Now, are you under the understanding -- 10:49:24
24 and I know that you're not a practicing physician, 10:49:28
25 but are you aware that there are several different 10:49:31

1 other types of stimulants outside of Adderall used 10:49:34
2 for other disorders such as narcolepsy? 10:49:38
3 A Yes. 10:49:41
4 Q Okay. When you are doing -- you talked 10:49:43
5 about on CB-2, on her -- on Ms. Mew's image or 10:49:47
6 document CB-2, the psychological evaluation, in 10:49:54
7 your additional comments, when you are -- when a 10:49:58
8 person has decreased documentation of having ADHD, 10:50:02
9 do you think that that means that they do not have 10:50:08
10 it, just because they don't have documentation? 10:50:11
11 A See, when you reference CB-2, do I need 10:50:18
12 to see that? 10:50:21
13 Q Well, no. So, my question to you is if a 10:50:24
14 patient comes to you and they don't have -- and 10:50:27
15 they're in their thirties and they don't have 10:50:31
16 medical records from when they were a child, does 10:50:34
17 that mean that they do not have ADHD in your 10:50:36
18 opinion? 10:50:40
19 A Not necessarily. 10:50:41
20 Q Does it mean that they don't have the 10:50:43
21 symptoms, signs and symptoms of ADHD? 10:50:46
22 A No. 10:50:48
23 Q You -- excuse me one second. 10:50:58
24 On the ABS -- on the ASEBA questionnaire 10:51:02
25 that was conducted also by Amelia Kitchens, my 10:51:07

1 wife, and my mother, is it normal for -- is it 10:51:14
2 normal for you to ask a parent for an evaluation 10:51:18
3 for an adult ADHD evaluation? 10:51:23
4 A Only if I believe the parent lives with 10:51:28
5 the client. And as I indicated before, I 10:51:33
6 mistakenly believed when I asked for that that your 10:51:38
7 mother lived with you. So, that was my mistake. 10:51:42
8 Q Okay. 10:51:48
9 A Because the assessment is for current 10:51:53
10 symptoms. 10:51:55
11 Q Right. So, we talked about the MOXO 10:51:58
12 earlier and we talked about, you were asked about 10:52:02
13 what these particular cards do and also asked about 10:52:08
14 that you tested me for reading. Would it be in 10:52:13
15 your understanding that the MOXO tests the 10:52:19
16 individual or your patient for attention? 10:52:21
17 A Yes. 10:52:25
18 Q Would you say that it assesses your 10:52:27
19 patients for concentration? 10:52:30
20 A So, the -- on the indices, it's the 10:52:37
21 attention, timeliness, impulsivity, and 10:52:41
22 hyperreactivity. And part of the attentiveness, it 10:52:46
23 explains -- and I don't know that it uses the word 10:52:53
24 "concentration," but it is in there for -- as part 10:52:55
25 of attentiveness. 10:53:01

1 Q So, in your own words, you would agree 10:53:03
2 that it would test for concentration? 10:53:05
3 A Yes. 10:53:09
4 Q Okay. I know that it's been a little -- 10:53:14
5 a while ago since we took that exam. When we 10:53:20
6 were -- do you recall when you sent me the 10:53:25
7 documentation and I reviewed it that I was -- or 10:53:31
8 what would you describe my -- my presentation when 10:53:38
9 I saw the results of this -- of this evaluation 10:53:43
10 from you? Would you say that I was surprised, not 10:53:47
11 surprised? You can elaborate. 10:53:55
12 A To the best of my memory, it was similar 10:53:59
13 to previous tests that you had taken in the past. 10:54:07
14 Q Okay. 10:54:13
15 DR. KITCHENS: Let's see here. Can we 10:54:29
16 pull up CB-1 and go to page 3, please. It's page 3 10:54:30
17 under results. Yes. And scroll down just a little 10:54:53
18 bit more as well. See at the bottom here -- thank 10:55:03
19 you, there, that's fine. 10:55:10
20 Q Do you see the last paragraph saying that 10:55:13
21 it affected multiple facets of his life, including 10:55:20
22 work and social life? When you are doing an 10:55:20
23 evaluation for ADHD, is it common for an evaluator 10:55:25
24 to rely heavily on the details of what the patient 10:55:30
25 is giving them? 10:55:34

1 A Yes. 10:55:35

2 Q And any diagnoses or evaluations that you 10:55:35

3 have conducted in your years of experience, that 10:55:42

4 you rely heavily on the presentation and words of 10:55:45

5 your client, of the patient? 10:55:54

6 A Yes. 10:55:58

7 Q Okay. 10:56:10

8 DR. KITCHENS: Let's see here. Can we go 10:56:13

9 to page -- scroll down to page 4, please. Yes, 10:56:14

10 thank you. 10:56:20

11 Q You talked earlier, Ms. Bacon, about 10:56:23

12 stressful environments. Can you explain, or in 10:56:28

13 your own words how would you describe the reaction 10:56:31

14 of stress on a person who has ADHD, how can it 10:56:37

15 affect them? 10:56:43

16 A In general, a person with ADHD in a 10:56:46

17 stressful situation has exacerbated symptoms. 10:56:51

18 Q Okay. And would you say that it can 10:56:56

19 cause a person to be distracted when reading? 10:57:00

20 A If that person has inattentive type or 10:57:10

21 combined presentation ADHD. 10:57:14

22 DR. KITCHENS: Can we please go to CB -- 10:57:29

23 so, page 7, please. 10:57:32

24 AV TECHNICIAN: I'm sorry, could you 10:57:39

25 repeat the CB number. 10:57:40

1 DR. KITCHENS: Yes, sorry. Same, CB-1, 10:57:43
2 page 7, please. CB-1, page 7. Thank you. 10:57:46

3 Q So, on here, let's see, you said that I 10:57:56
4 exceeded expectations for ADHD. What do you mean 10:58:02
5 by I exceed the expectations for ADHD? 10:58:10

6 A What I mean, I say exceed expectations -- 10:58:15
7 I'm going to go to that line so I can see how I 10:58:20
8 worded that. 10:58:23

9 Q Take your time. 10:58:25

10 A Exceeds the number of symptoms for 10:58:29
11 diagnosis. 10:58:32

12 And what I mean by that is there is a 10:58:33
13 list of multiple options of symptoms, and the 10:58:37
14 requirement is to have at least three out of the 10:58:44
15 entire list. It can be a different combination of 10:58:47
16 three per person in the inattentive type and at 10:58:51
17 least three in the hyperactive type. 10:58:58

18 If you do have inattentive ADHD, you can 10:59:00
19 have -- you have to have at least three symptoms of 10:59:03
20 the inattentive type, you can have no symptoms, or 10:59:06
21 you can have two symptoms of hyperactivity type. 10:59:10
22 And vice versa. If you have hyperactivity type, or 10:59:15
23 hyperactive impulsive type, then you could have -- 10:59:21
24 you have to have three of those. 10:59:26

25 And what I mean by this is in order to 10:59:27

1 have the combined presentation, you have to have at 10:59:30
2 least three of the inattentive type and three of 10:59:32
3 the hyperactive impulsive type. You exceeded that, 10:59:36
4 because you had more than three. When you have -- 10:59:41
5 you had more than three symptoms of each to equal 10:59:44
6 to the combined presentation. 10:59:48

7 Q And would it be your opinion that this 10:59:51
8 evaluation is valid? 10:59:53

9 A Yes. 10:59:58

10 Q Thank you. 11:00:05

11 DR. KITCHENS: Can we go down to CB-1, 11:00:07
12 page 8, please. Thank you. 11:00:10

13 Q Do you see where it says recommendations 11:00:13
14 of care. We were talking a little bit earlier 11:00:15
15 about you recommend for accommodations when taking 11:00:19
16 tests such as the medical boards. When you say 11:00:25
17 tests, do you mean testing in general? 11:00:31

18 A Yes. 11:00:36

19 Q Okay. So, if I was taking -- say, I was 11:00:36
20 in high school with this evaluation, would you make 11:00:41
21 the recommendation for me to have accommodations on 11:00:43
22 the ACT exam? 11:00:48

23 A Yes. 11:00:50

24 Q On a high school examination? 11:00:51

25 A If you were in high school -- 11:00:56

1 Q Yes. 11:00:58

2 A -- with these results, then yes, these -- 11:00:59

3 yes. 11:01:04

4 Q Okay. Would you make this same 11:01:05

5 recommendation in my college courses? If I was 11:01:06

6 still in college, would you make these, the same 11:01:09

7 recommendation for accommodations on my 11:01:12

8 examinations? 11:01:14

9 A If we did this assessment when you were 11:01:15

10 in college with the same results, I would have 11:01:17

11 recommended extended time. 11:01:20

12 Q And in medical school, would you make 11:01:23

13 this same recommendation, if we did the evaluation 11:01:25

14 while I was in medical school? 11:01:28

15 A Yes, if we did the recommendation, if we 11:01:31

16 did the assessment, same results, during medical 11:01:33

17 school, I would have recommended the same thing. 11:01:36

18 Q Okay. 11:01:40

19 DR. KITCHENS: All right, one second, 11:01:45

20 please. You can take down the CB-1, please. 11:01:46

21 Q Ms. Bacon, are you aware that there are 11:01:56

22 certain ethnic groups that tend to have ADHD but 11:02:00

23 are predominantly undiagnosed? 11:02:06

24 A Yes. 11:02:11

25 Q Okay. Thank you. 11:02:15

1 When you are doing an evaluation on a 11:02:20
2 person for ADHD, how far back in the evaluation or 11:02:22
3 the history do you go, meaning when they're 11:02:28
4 explaining to you when their symptoms first 11:02:32
5 started? 11:02:35

6 A Sure. We -- part of the DIVA in the 11:02:36
7 semi-structured interview is to ask about childhood 11:02:42
8 symptoms. It breaks it down into the overall 11:02:45
9 symptoms. It gives examples of adulthood and 11:02:51
10 childhood, which is one of the reasons I like the 11:02:55
11 assessment, because it really correlates the two, 11:02:58
12 the symptoms, and we can look at history. 11:03:02

13 Q When you were evaluating me while taking 11:03:07
14 this exam, when you were observing me, what did you 11:03:11
15 observe from my body language? 11:03:16

16 A I observed that -- which do you mean, 11:03:20
17 during the MOXO, do you mean during the -- 11:03:26

18 Q Yes. 11:03:28

19 A Okay. During the MOXO, as I stated 11:03:29
20 earlier, I noticed that you were moving a lot, 11:03:32
21 having a lot of -- it appeared as distress for, you 11:03:37
22 know, staying in the seat, moving, wringing your 11:03:44
23 hands, and -- but I did see that you stayed looking 11:03:50
24 at the test, and I could tell from that that you 11:03:54
25 were working on the test. 11:03:58

1 Q And would you say that because of that 11:04:02
2 stress that it would -- because of that stress that 11:04:05
3 it could have affected -- that that stress could 11:04:11
4 have affected my -- the score on the MOXO, the 11:04:14
5 stress? 11:04:19

6 A I don't know that I understand the 11:04:25
7 question. Can you ask that again. 11:04:27

8 Q Yes. So, I guess what I am -- let me 11:04:29
9 restate this. 11:04:33

10 Could the stress levels in this -- in an 11:04:34
11 environment of an exam affect the outcomes due to 11:04:39
12 ADHD? Stress levels. 11:04:43

13 A Yes. Yes. 11:04:51

14 Q Okay. In your opinion, when you were -- 11:04:58
15 when we had our clinical interview, did you feel 11:05:10
16 that I -- did I talk over you excessively? 11:05:16

17 A Well, there were some -- there were 11:05:23
18 several, like, times that we were talking and it 11:05:26
19 was as an impulsive type of talk, it wasn't -- my 11:05:30
20 interpretation wasn't in a rude or controlling 11:05:36
21 manner, it felt like an impulsive, oh, I need to 11:05:42
22 say this and -- type of conversation. If -- I 11:05:47
23 don't know that I answered your question. 11:05:52

24 Q Yes. And would you say that impulsive 11:05:54
25 would be a part of signs and symptoms of ADHD? 11:05:58

1 A It can be if the person has high 11:06:08
2 presentation or hyperactive impulsive type. 11:06:10

3 Q Okay. In your opinion, during our 11:06:14
4 clinical interview did I seem like I was always on 11:06:16
5 the go, like I needed to move around or these type 11:06:23
6 of things, always on the go? 11:06:27

7 A Yes, it seemed like you had a lot of 11:06:29
8 physical energy based on the conversations that we 11:06:32
9 had, the interactions, the physical observations, 11:06:35
10 you know, hand movements, physical movements. 11:06:40

11 Q In your opinion, was I aware that -- when 11:06:44
12 you were interrupted, was I aware that I 11:06:50
13 interrupted you? And if so, what was the reaction, 11:06:53
14 or if not? 11:06:56

15 A To the best of my memory, you apologized 11:06:59
16 and were very polite about it. 11:07:02

17 Q Is this something that is common for a 11:07:06
18 person who has ADHD? 11:07:09

19 A Yes. 11:07:10

20 DR. KITCHENS: Thank you. Okay. Sorry. 11:07:36
21 Okay, I think I don't have any more questions. 11:07:36
22 Thank you, Ms. Bacon. 11:07:38

23 THE WITNESS: Thank you. 11:07:41

24 THE VIDEOGRAPHER: Counsel, do you have 11:07:53
25 any further questions? 11:07:54

1 MS. MEW: You know, just in the interest 11:07:55
2 of completeness, can we pull up CB-7. 11:07:56

3 (Defendant's Exhibit CB-7 was marked for 11:08:06
4 identification and is attached to the transcript.) 11:08:06

5 BY MS. MEW: 11:08:13

6 Q Ms. Bacon, I can't remember if I showed 11:08:14
7 you this before. 11:08:16

8 MS. MEW: But if we could just scroll 11:08:16
9 through quickly, Michael. 11:08:18

10 Q Ms. Bacon, is this a true and correct 11:08:29
11 copy of your current CV? 11:08:32

12 A Yes. 11:08:34

13 MS. MEW: Thank you. I don't have any 11:08:36
14 other questions. 11:08:37

15 THE VIDEOGRAPHER: This marks the end of 11:08:43
16 the deposition of Christina Bacon, LPP. We are 11:08:44
17 going off the record at 11:08 a.m. 11:08:49

18 (Off the video record.) 11:08:52

19 DR. KITCHENS: Thank you very much for 11:08:57
20 your time, Ms. Bacon. 11:09:00

21 THE WITNESS: Thank you. 11:09:00

22 THE REPORTER: Counsel, could I get 11:09:00
23 orders, please. 11:09:06

24 MS. MEW: Yes. I would like a standard 11:09:07
25 transcript order. 11:09:09

1 THE REPORTER: All right. And Dr. 11:09:13

2 Kitchens? 11:09:14

3 DR. KITCHENS: Yes, I would like a 11:09:15

4 standard, email please. And compressed, if you 11:09:16

5 have -- if that's not asking too much. 11:09:20

6 (Off the record at 11:09 a.m.)

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1 CERTIFICATE OF REPORTER - NOTARY PUBLIC

2 I, Jacquelyn C. Jarboe, Registered

3 Professional Reporter, the officer before whom the
4 foregoing deposition was taken, do hereby certify
5 that the foregoing transcript is a true and correct
6 record of the testimony given; that said testimony
7 was taken by me stenographically and thereafter
8 reduced to typewriting by me; that reading and
9 signing was not requested; and that I am neither
10 counsel for, related to, nor employed by any of the
11 parties to this case and have no interest,
12 financial or otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set
14 my hand and affixed my notarial seal this 17th day
15 of April, 2023.

16

17

18 My commission expires:

19 August 21, 2026

20

21 

22

23 NOTARY PUBLIC IN AND FOR THE
24 STATE OF MARYLAND

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